

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

AMERICAN SEATING COMPANY,

Plaintiff,

Case Number: 01:01-cv-0578

v.

Honorable Avern Cohn

USSC GROUP, INC., et al,

Defendant.

**MEMORANDUM REGARDING PLAINTIFF'S MOTION FOR EXTENSION OF TIME TO
FILE NOTICE OF APPEAL**

This is a patent case in which the issues of validity and infringement were bifurcated from damages. On August 22, 2006, the Court entered an Opinion and Order Granting in Part and Denying in Part Defendant's Motion for Judgment as a Matter of Law, New Trial or Remittitur of the Jury Verdict (Opinion). On August 24, 2006, the Court entered an Amended Opinion and Order Granting in Part and Denying in Part Defendant's Motion for Judgment as a Matter of Law, New Trial or Remittitur of the Jury Verdict (Amended Opinion). In a footnote, the Amended Opinion stated:

This Amended Opinion and Order supercedes the Opinion and Order filed August 22, 2005. This opinion contains a more expansive description of the prior decisions in the case and corrects a typographical error on page twenty five from "metal A.R.M." to "metal arm" which now appears on page twenty six of this opinion.

On September 22, 2006, plaintiff filed a notice of appeal. Under Fed. R. App. P. 4(a)(1)(A), plaintiff had thirty (30) days in which to file a notice of appeal. The notice was filed thirty-one (31) days after the August 22, 2006 Opinion and twenty-nine days from the August 24, 2006 Amended Opinion. Plaintiff concedes that the notice of appeal is untimely

as it should have been filed within thirty (30) days of the Opinion, not the Amended Opinion. However, under Fed. R. App. P. 4(a)(5)(A), the time to file a notice of appeal may be extended upon a finding of excusable neglect. Before the Court is plaintiff's motion for an extension of time to file a notice of appeal under Fed. R. App. P. 4(a)(5)(A). Defendant objects to the motion.

Defendant has also filed a motion to dismiss the appeal in the Court of Appeals for the Federal Circuit. Plaintiff says it will not object to the motion to dismiss the appeal. Because the case is still pending in the Federal Circuit, the Court is without jurisdiction to consider plaintiff's motion. Assuming that the Federal Circuit grants the motion to dismiss the appeal, the Court would enter an order granting plaintiff's motion. The Court finds, in its discretion, and for the reasons explained in plaintiff's papers, that excusable neglect exists such that plaintiff should be permitted an extension of time in which to file a notice of appeal.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: October 31, 2006

I hereby certify that a copy of the foregoing document was mailed to the parties of record on this date, October 31, 2006, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160